## **United States District Court**

EASTERN DISTRICT OF TEXAS SHERMAN DIVISION

| PDQ CONSULTING, INC.,   | § |                               |
|-------------------------|---|-------------------------------|
|                         | § |                               |
| Plaintiff,              | § |                               |
|                         | § |                               |
| v.                      | § | <b>ACTION NO. 4:18-CV-809</b> |
|                         | § | JUDGE MAZZANT/JUDGE JOHNSON   |
|                         | § |                               |
| CAPITAL ONE BANK, N.A., | § |                               |
|                         | § |                               |
| Defendant.              | § |                               |
|                         | § |                               |
|                         | 8 |                               |

## MEMORANDUM ADOPTING REPORT AND RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On April 18, 2019, the Magistrate Judge entered proposed findings of fact and recommendations (the "Report") (Dkt. #14) that Defendant Capital One Bank, N.A.'s ("Defendant") Motion to Dismiss (Dkt. #4) be **GRANTED IN PART** and **DENIED IN PART**.

Having received the Report of the United States Magistrate Judge, and no objections thereto having been timely filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court. In the Report, the Magistrate Judge recommended Plaintiff's negligence claim be dismissed because Plaintiff PDQ Consulting, Inc. ("Plaintiff") conceded its negligence claim is barred by the economic loss rule. *See* Dkt. #14 at 5–6; Dkt. #4 at 2, n.1 ("Plaintiff does not dispute Defendant's assertion that its claim for negligence is barred by the economic loss rule."). No objections were filed and the Court finds no error. Accordingly, Plaintiff's negligence claim is **DISMISSED WITH PREJUDICE**.

Additionally, the Magistrate Judge recommended the Motion to Dismiss be denied with respect to Plaintiff's claims for fraud and breach of contract, to allow Plaintiff to amend its Complaint. *See* Dkt. #14 at 4–6. No objections were filed. Accordingly, the Court **DENIES** the Motion to Dismiss with respect to Plaintiff's fraud and breach of contract claims. The Court

Therefore, the Motion to Dismiss (Dkt. #4) is **GRANTED IN PART** and **DENIED IN PART**. Plaintiff's negligence claim is hereby **DISMISSED WITH PREJUDICE**. Defendant's Motion to Dismiss is hereby **DENIED** with respect to Plaintiff's fraud and breach of contract claims.

notes Plaintiff filed an amended Complaint on May 2, 2019. See Dkt. #18.

IT IS SO ORDERED.

SIGNED this 3rd day of May, 2019.

AMOS L. MAZZANT

UNITED STATES DISTRICT JUDGE